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TITLE 6 PRIMARY AND SECONDARY EDUCATION
CHAPTER 100 VOCATIONAL REHABILITATION – CLIENT SERVICES
PART 2 DIRECT CLIENT SERVICES

6.100.2.1 ISSUING AGENCY: State Board of Education
[12-31-98; 07-30-99; Recompiled 10/31/01]

6.100.2.2 SCOPE: The provisions of this regulation apply to: persons served by DVR; commercial and non-profit organizations that are either certified by DVR to provide vocational rehabilitation services or employed as its contractual agent; and those state and local governmental agencies which have entered into cooperative arrangements with DVR.
[12-31-98; Recompiled 10/31/01]

6.100.2.3 STATUTORY AUTHORITY: This regulation is adopted pursuant to Section 22-14-8 NMSA 1978.
[12-31-98; Recompiled 10/31/01]

6.100.2.4 DURATION: Permanent
[12-31-98; Recompiled 10/31/01]

6.100.2.5 EFFECTIVE DATE: December 31, 1998
[12-31-98; Recompiled 10/31/01]

6.100.2.6 OBJECTIVE: This regulation governs the administration of laws relating to vocational rehabilitation services. The purpose of DVR is to empower individuals with disabilities to maximize their employment, economic self-sufficiency, independence, and inclusion and integration into society; and to play a leadership role in promoting the meaningful and gainful employment and the independent living of individuals with disabilities, and assist providers of services in their efforts in this regard.
[12-31-98; Recompiled 10/31/01]

6.100.2.7 DEFINITIONS:

- A. "Applicant" means an individual for whom a formal application for vocational rehabilitation services has been signed and submitted to DVR by the individual or the individual's authorized representative.
- B. [Reserved]
- C. [Reserved]
- D. [Reserved]
- E. Community rehabilitation program means a program that provides directly or facilitates the provision of vocational rehabilitation services to individuals with disabilities, and that provides, singly or in combination, for an individual with a disability to enable the individual to maximize opportunities for employment, including career advancement.
 - (1) Medical, psychiatric, psychological, social, and vocational services that are provided under one management;
 - (2) Testing, fitting, or training in the use of prosthetic and orthotic devices;
 - (3) Recreational therapy;
 - (4) Physical and occupational therapy;
 - (5) Speech, language, and hearing therapy;
 - (6) Psychiatric, psychological and social services, including positive behavior management;
 - (7) Assessment for determining eligibility and vocational rehabilitation needs;
 - (8) Rehabilitation technology;
 - (9) Job development, placement, and retention services;
 - (10) Evaluation or control of specific disabilities;
 - (11) Orientation and mobility services for individuals who are blind;
 - (12) Extended employment;

- (13) Psycho-social rehabilitation services;
 - (14) Supported employment services and extended services;
 - (15) Services to family members when necessary to the vocational rehabilitation of the individual;
 - (16) Personal assistance services; or
 - (17) Services similar to the services described above.
- F. [Reserved]
- G. [Reserved]
- H. "Disability" means a physical or mental impairment that constitutes or results in a substantial impediment to employment.
- I. [Reserved]
- J. "Employment outcome" means, with respect to an individual, entering or retaining full-time or, if appropriate, part-time competitive employment in the integrated labor market (including satisfying the vocational outcome of supported employment) as well as homemaking, sheltered employment, and home-based employment.
- K. [Reserved]
- L. "Extended services" means ongoing support services and other appropriate services, needed to support and maintain an individual with the most severe disability in supported employment, that:
 - (1) Are provided singly or in combination and are organized and made available in such a way as to assist an eligible individual in maintaining integrated, competitive employment;
 - (2) Are based on a determination of the needs of an eligible individual, as specified in an individualized written rehabilitation program; and
 - (3) Are provided by a State agency, a nonprofit private organization, employer, or any other appropriate resource, after an individual has made the transition from support provided by the designated State unit.
- M. [Reserved]
- N. "Functional limitations" mean limitations imposed by an impairment that impede or limit an individual's functioning in one or more of the following areas (or in any area of physical or mental function):
 - (1) Sensory functioning;
 - (2) Manual dexterity;
 - (3) Motor coordination;
 - (4) Physical strength or stamina;
 - (5) Mobility;
 - (6) Work habits;
 - (7) Personal behavior;
 - (8) Academic achievement;
 - (9) Interpersonal relations;
 - (10) Job seeking skills;
 - (11) Physical appearance;
 - (12) Physical or mental comfort;
 - (13) Thought processes;
 - (14) Learning;
 - (15) Emotional stability;
 - (16) Communication;
 - (17) Speech;
 - (18) Perception;
 - (19) Judgment; or
 - (20) Memory.
- O. [Reserved]
- P. [Reserved]
- Q. "Individual with a severe disability" means an individual with a disability:
 - (1) Who has a severe physical or mental impairment which seriously limits one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome;
 - (2) Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and

(3) Who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia and other spinal cord conditions, sickle-cell anemia, specific learning disabilities, end-stage renal disease, or another disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs.

R. [Reserved]

S. [Reserved]

T. [Reserved]

U. "Personal assistance services" means a range of services, provided by one or more persons, designed to assist an individual with a disability to perform daily living activities on or off the job that the individual would typically perform if the individual did not have a disability. Such services shall be designed to increase the individual's control in life and ability to perform everyday activities on or off the job.

V. [Reserved]

W. "Physical or mental impairment" means a physical or mental condition which substantially contributes to limiting, or if not corrected will probably result in limiting, an individual's functioning. The same exclusions that apply to the definition of "disability" under this rule apply to the term "Physical or Mental Impairment".

X. [Reserved]

Y. [Reserved]

Z. "Rehabilitation technology" means the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of and address the barriers confronted by individuals with disabilities in areas which include education, rehabilitation, employment, transportation, independent living, and recreation. The term includes rehabilitation engineering, assistive technology devices, and assistive technology services.

AA. "Substantial impediment to employment" means a physical or mental impairment, in light of attendant medical, psychological, vocational, educational, and other related factors that impedes an individual's occupational performance by preventing the individual from obtaining, retaining, or preparing for employment consistent with the individual's capacities and abilities.

BB. "Substantially limits" means, in relation to the impairment, having a substantial consequence that is not temporary or easily ameliorated.

CC. "Supported employment" means competitive work in integrated work settings for individuals with the most severe disabilities for whom competitive employment has not traditionally occurred; or for whom competitive employment has been interrupted or intermittent as a result of a severe disability; and who, because of the nature and severity of their disability, need intensive supported employment services or extended services in order to perform such work. Such term includes transitional employment for persons who are individuals with the most severe disabilities due to mental illness.

DD. "Temporarily or easily ameliorated" means of no permanent or chronic consequence; a condition which is expected to last for a limited time only or to be corrected, either partially or totally, by an identified treatment, with little or no residual effects on functioning; an impairment for which the only service needed is payment of medical expenses.

EE. [Reserved]

FF. [Reserved]

GG. [Reserved]

[12-31-98; Recompiled 10/31/01]

6.100.2.8 GENERAL POLICY: General policies include:

A. Respect for individual dignity, personal responsibility, self-determination, and pursuit of meaningful careers, based on the informed choice of individuals with disabilities;

B. Respect for the privacy, rights, and equal access of individuals with disabilities;

C. Inclusion, integration, and full participation of individuals with disabilities;

D. Support for the involvement of the family, advocates or authorized representatives, if desired or requested by the individual with a disability; and

E. Support for individual and systemic advocacy and community involvement.
[12-31-98; Recompiled 10/31/01]

6.100.2.9 NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS AND FEDERAL GRANTS:
DVR shall conduct programs and activities in such a manner that no person in the United States will be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any such program or activity on the ground of race, color, national origin, sex, religion, age, or physical or mental impairment.
[12-31-98; Recompiled 10/31/01]

6.100.2.10 STAFFING OF THE STATE VOCATIONAL REHABILITATION PROGRAM:
A. DVR shall employ sufficient number of staff with appropriate qualifications to carry out all functions required, including program planning and evaluation, staff development, rehabilitation facility development and utilization, medical consultation, and rehabilitation counseling services for individuals with severe handicaps.
B. DVR shall make personnel available who are able to communicate in the native languages of applicants with limited English-speaking ability from ethnic groups which represent substantial segments of the state population as well as personnel who are able to communicate with individuals who rely on special modes of communication such as oral and non-verbal communication devices.
C. DVR shall recruit, prepare and retain qualified personnel, including personnel from minority backgrounds, and personnel who are individuals with disabilities.
D. DVR shall provide a system for the continuing education of the rehabilitation professionals and paraprofessionals it employs, particularly with respect to rehabilitation technology.
E. DVR shall set, establish and maintain standards to ensure that its personnel are appropriately and adequately prepared and trained.
[12-31-98; Recompiled 10/31/01]

6.100.2.11 PLANNING:
A. DVR shall develop and administer a state plan and a related strategic plan for vocational rehabilitation services which are effective for all political subdivisions, except in the case of any activity of demonstration projects or special initiatives likely to assist groups of individuals with disabilities.
B. DVR shall conduct public hearings to obtain comments for development of a state plan and strategic plan for provision of rehabilitation services, after appropriate and sufficient notice, to allow interested groups and organizations, and all segments of the public an opportunity to participate.
[12-31-98; Recompiled 10/31/01]

6.100.2.12 ESTABLISHMENT OF STATE REHABILITATION ADVISORY COUNCIL: DVR shall establish a state rehabilitation advisory council, seek and consider the advice of the council, and transmit to the council: all plans, reports, and other information required to be submitted to the commissioner of the rehabilitation services administration; all policies, practices, and procedures of general applicability provided to or used by rehabilitation personnel; and copies of due process hearing decisions, which shall be transmitted in such a manner as to preserve the confidentiality of the participants in the hearings.
[12-31-98; Recompiled 10/31/01]

6.100.2.13 INFORMATION, REFERRAL, AND OUTREACH:
A. DVR will provide for the establishment and maintenance of information and referral programs (the staff of which shall include, to the maximum extent feasible, interpreters for individuals who are deaf) in sufficient numbers to assure that individuals with disabilities within the state are afforded accurate vocational rehabilitation information and appropriate referrals to other federal and state programs and activities which would benefit them.
B. DVR will conduct outreach procedures to identify and serve individuals with disabilities who are minorities and individuals with disabilities who have been unserved or under-served by the vocational rehabilitation system.
[12-31-98; Recompiled 10/31/01]

6.100.2.14 COOPERATION WITH OTHER PUBLIC AGENCIES:

A. DVR will enter into appropriate cooperative arrangements with, and utilize the services and facilities of, federal, state, and other governmental agencies administering programs related to the rehabilitation of handicapped individuals to ensure that clients with disabilities receive appropriate services.

B. When the state's share of the cost of a cooperative program for providing vocational rehabilitation services or for engaging in administrative activities of DVR is furnished in whole or in part by a state or local public agency other than DVR, each such cooperative program will be based on a written agreement which meets the requirements of applicable federal regulations.

C. DVR shall provide training to staff of other appropriate governmental agencies as to the availability and benefits of, and eligibility standards for, vocational rehabilitation services, in order to enhance the opportunity of individuals to obtain vocational rehabilitation services.

D. In providing for interagency cooperation, DVR will, as appropriate: establish interagency working groups; enter into formal interagency cooperative agreements that identify policies, practices, and procedures that can be coordinated among the agencies (particularly definitions, standards for eligibility, the joint sharing and use of evaluations and assessments, and procedures for making referrals); identify available resources and define the financial responsibility of each agency for paying for necessary services (consistent with state law) and procedures for resolving disputes between agencies; and include all additional components necessary to ensure meaningful cooperation and coordination.

[12-31-98; Recompiled 10/31/01]

6.100.2.15 USE OF COMMUNITY RESOURCES:

A. DVR will maximally utilize public or other vocational or technical training programs or other appropriate resources in the community; and, as appropriate, enter into agreements with the operators of community rehabilitation programs for the provision of services for the rehabilitation of individuals with disabilities.

B. DVR will assure that facilities used in connection with the delivery of services assisted under the state plan will comply with the Architectural Barriers Act of 1968, with section 504 of Rehabilitation Act of 1973 as amended, and with the Americans with Disabilities Act of 1990. DVR will require an assurance from each community rehabilitation program it employs, certifying that the program is either in compliance with the aforementioned regulatory requirements or documenting why it has a valid exemption under the law.

[12-31-98; Recompiled 10/31/01]

6.100.2.16 CASE RECORDING: DVR shall maintain a case record for each applicant for, and recipient of, vocational rehabilitation services.

[12-31-98; Recompiled 10/31/01]

6.100.2.17 AUTHORIZATION OF SERVICES: DVR shall authorize vocational rehabilitation services for individuals with disabilities in writing prior to providing such services. In emergency situations, DVR may make verbal authorization for vocational rehabilitation services, issuing prompt written authorization to the service provider.

[12-31-98; Recompiled 10/31/01]

6.100.2.18 PROTECTION, USE AND RELEASE OF PERSONAL INFORMATION: DVR shall safeguard confidentiality of personal information about applicants for and recipients of vocational rehabilitation services.

[12-31-98; Recompiled 10/31/01]

6.100.2.19 ESTOPPEL: Statements of fact or law by employees of DVR shall not estop DVR from acting in accordance with federal and state laws and regulations.

[12-31-98; Recompiled 10/31/01]

6.100.2.20 FACTORS DISREGARDED IN DETERMINING ELIGIBILITY: DVR shall determine eligibility of applicants for services without regard to:

A. Sex, race, creed, religion, age, color, or national origin;

B. Upper or lower age limits if they result by themselves in a finding of ineligibility for any applicant who otherwise meets the basic eligibility requirements;

C. A residence requirement, durational or otherwise, which excludes from service any individual who is present in the state; or

D. Current illegal use of drugs, if the applicant is otherwise eligible for services.
[12-31-98; Recompiled 10/31/01]

6.100.2.21 ELIGIBILITY CRITERIA:

A. An individual is eligible for assistance for vocational rehabilitation services if the individual:

- (1) has a physical or mental impairment which, for the individual, constitutes or results in a substantial impediment to employment; and
- (2) can benefit in terms of an employment outcome from vocational rehabilitation services; and
- (3) requires vocational rehabilitation services to prepare for, enter, engage in, or retain gainful employment.

B. An individual who has a disability or is blind as determined under Title II or XVI of the Social Security Act is considered to have:

- (1) a physical or mental impairment which constitutes or results in a substantial impediment to employment; and
- (2) a severe physical or mental impairment which seriously limits one or more functional capacities in terms of an employment outcome.

C. Determinations by other agencies, particularly education agencies, regarding whether an individual satisfies one or more factors relating to the determination that an applicant is an individual with a disability or a severe disability are to be used to the extent appropriate, available, and consistent with the requirement of the Rehabilitation Act of 1973, as amended.

[12-31-98; Recompiled 10/31/01]

6.100.2.22 PRESUMPTION OF BENEFIT:

A. There is a presumption that an individual can benefit in terms of an employment outcome from vocational rehabilitation services. Thus, all individuals applying for vocational rehabilitation services are presumed to be able to benefit in terms of an employment outcome from vocational rehabilitation services unless DVR can rebut this presumption.

B. To rebut this presumption, DVR must demonstrate by clear and convincing evidence that an individual is incapable of benefiting from vocational rehabilitation services in terms of an employment outcome.

C. If there is an issue concerning the severity of an individual's disability, DVR must conduct an extended evaluation prior to determining that the individual is incapable of benefiting from services.

[12-31-98; Recompiled 10/31/01]

6.100.2.23 TIME LIMIT FOR DETERMINING ELIGIBILITY:

A. DVR shall determine whether an individual is eligible for vocational rehabilitation services within 60 days after the individual has submitted an application to receive services.

B. DVR may extend the 60 day limit for determining eligibility if:

- (1) DVR notifies the individual that exceptional and unforeseen circumstances beyond its control preclude the completion of the eligibility determination within the 60 days and the individual agrees that an extension of time is warranted; or

- (2) An extended evaluation is required.

[12-21-98; Recompiled 10/31/01]

6.100.2.24 ASSESSMENT OF EXISTING DATA AND PRELIMINARY ASSESSMENT OF REHABILITATION NEEDS:

A. The counselor assigned by DVR shall review existing data:

- (1) To determine whether an individual is eligible for vocational rehabilitation services; and
- (2) To assign the priority of the individual for order of selection (if and when an order of selection is in force).

B. If existing data are unavailable, insufficient, or inappropriate to make a determination of eligibility, the counselor assigned by DVR shall conduct a preliminary assessment to determine the individual's eligibility and priority for order of selection (if and when an order of selection is in force).

C. A preliminary assessment may include the provision of those vocational rehabilitation services necessary to determine whether the individual can benefit in terms of an employment outcome from the provision of vocational rehabilitation services.

D. Decisions regarding the nature and scope of the vocational rehabilitation services to be provided during a preliminary assessment shall be made on a case-by-case basis, with consideration given to the importance of providing assistive technology devices and services and work-site assessments as a part of the preliminary assessment.

E. In all cases of mental or emotional disorder, DVR shall require documentation of examination by a physician skilled in the diagnosis and treatment of such disorders, by a psychologist licensed by the state, or by a psychologist classified by the state personnel board, or other appropriate professional credentialed by or through the state.

[12-31-98; Recompiled 10/31/01]

6.100.2.25 DETERMINATION OF ELIGIBILITY: When an applicant is determined eligible for vocational rehabilitation services, the counselor assigned by DVR shall prepare a signed and dated statement to this effect. Such a statement is prepared only after consultation with the individual, or, as appropriate, his parent, family member, guardian, or authorized representative, or after affording a clear opportunity for such consultation.

[12-31-98; Recompiled 10/31/01]

6.100.2.26 DETERMINATION OF INELIGIBILITY:

A. Any of the following reasons may constitute the basis for a determination of ineligibility:

- (1) no impairment exists;
- (2) an impairment exists; however, there is no clear evidence that it has resulted in a substantial impediment to employment;
- (3) the individual cannot benefit from vocational rehabilitation services in terms of an employment outcome; or
- (4) [Reserved]

B. When an applicant is determined ineligible for vocational rehabilitation services, the counselor assigned by DVR shall prepare a signed and dated statement to this effect. Such a statement of ineligibility is prepared only after consultation with the individual, or, as appropriate, his parent, family member, guardian, or authorized representative, or after affording a clear opportunity for such consultation.

[12-31-98; Recompiled 10/31/01]

6.100.2.27 DETERMINATION OF THE NEED FOR EXTENDED EVALUATION: When the counselor assigned by DVR is unable to make a determination that vocational rehabilitation services are required for an applicant in terms of employment outcome unless there is an extended evaluation to determine rehabilitation potential, the counselor shall make a signed and dated statement of such inability, providing for an extended evaluation. Such a statement, providing for an extended evaluation, is prepared only after consultation with the individual, or, as appropriate, his parent, family member, guardian, or authorized representative, or after affording a clear opportunity for such consultation.

[12-31-98; Recompiled 10/31/01]

6.100.2.28 EXTENDED EVALUATION TO DETERMINE ELIGIBILITY AND SCOPE OF SERVICES NEEDED:

A. DVR provides vocational rehabilitation services under extended evaluation to determine eligibility based upon:

- (1) The presence of a physical or mental impairment which for the individual constitutes or results in a substantial impediment to employment; and
- (2) An inability to make a determination that vocational rehabilitation services are required for the individual in terms of an employment outcome.

B. DVR may provide vocational rehabilitation services necessary for the determination of eligibility, including those provided within a comprehensive assessment and, where appropriate, the provision of rehabilitation technology services to an applicant with a disability to assess and develop the capacities of the individual to perform in a work environment, for a total period not in excess of 18 months.

C. [Reserved]

D. DVR may terminate vocational rehabilitation services necessary for the determination of eligibility at any time prior to the expiration of the 18-month extended evaluation period for the determination of eligibility when:

(1) The individual is found eligible for vocational rehabilitation services based upon a determination that the individual can be expected to benefit in terms of employment outcome from vocational rehabilitation services; or

(2) The individual is found ineligible for any additional vocational rehabilitation services on the basis of clear and convincing evidence that the individual is incapable of benefiting from vocational rehabilitation services in terms of an employment outcome.

[12-31-98; Recompiled 10/31/01]

6.100.2.29 NOTIFICATION, AND REVIEW OF ELIGIBILITY DECISIONS:

A. When an individual is determined eligible or ineligible for vocational rehabilitation services, DVR shall notify the individual in writing of the determination. DVR shall specify:

(1) The reasons for such a determination;

(2) The rights and remedies available to the individual, including, if appropriate, recourse to the impartial hearing process;

(3) The availability of services provided by the client assistance program to the individual; and

(4) The individual's right to re-apply for services upon a change of the individual's circumstances.

B. Within twelve months of the date of the determination of ineligibility DVR shall conduct a review to assess new information or changes in circumstances of the individual that may affect his eligibility.

C. DVR shall continue annual reviews of a determination of ineligibility at the request of the individual, his guardian, parent or representative.

[12-31-98; Recompiled 10/31/01]

6.100.2.30 ORDER OF SELECTION: [RESERVED]

[12-31-98; Recompiled 10/31/01]

6.100.2.32 COMPREHENSIVE ASSESSMENT OF VOCATIONAL NEEDS:

A. Once an individual is determined eligible for vocational rehabilitation services and to the extent necessary, DVR shall provide a comprehensive assessment of the unique strengths, resources, priorities, interests, and needs, including the need for supported employment, to determine the goals, objectives, nature and scope of vocational rehabilitation services to be included in the individualized written rehabilitation program developed for the individual.

B. The assessment will be limited to information that is necessary to identify the rehabilitation needs of the individual and to develop the rehabilitation program of the individual.

C. The primary source of such information, to the maximum extent possible and appropriate and in accordance with confidentiality requirements, will be existing information and such information as can be provided by the individual and, where appropriate, by the family of the individual, and:

(1) may include, to the degree needed, an assessment of the personality, interest, interpersonal skills, intelligence and related functional capacities, educational achievements, work experience, vocational aptitudes, personal and social adjustments, employment opportunities, medical, psychiatric, psychological, and other pertinent vocational, educational, cultural, social, recreational, and environmental factors that affect the employment and rehabilitation needs of the individual; and

(2) may also include an appraisal of the patterns of work behavior of the individual and services needed for the individual to acquire occupational skills, and to develop work attitudes, work habits, work tolerance, and social and behavioral patterns necessary for successful job performance, including the utilization of work in real job situations to assist and develop the capacities of the individual to perform adequately in a work environment; and

(3) Where appropriate, the provision of rehabilitation technology services.

[12-31-98; Recompiled 10/31/01]

6.100.2.33 INDIVIDUALIZED WRITTEN REHABILITATION PROGRAM:

A. The counselor assigned by DVR shall initiate and periodically update an individualized written rehabilitation program for each individual determined to be:

- (1) In need of an extended evaluation to determine eligibility for vocational rehabilitation services; or
- (2) Eligible for vocational rehabilitation services.

B. The counselor assigned by DVR and the individual shall jointly develop an individualized written rehabilitation program for provision of vocational rehabilitation services to the individual in accordance with that program, specifying:

- (1) All services to be provided, except for assessments to determine the need for further services; and
- (2) An appropriate employment objective which is consistent and feasible, considering the individual's capacities and abilities.

C. Any individualized written rehabilitation program developed for the purpose of extended evaluation shall relate only to the purpose of determining if the individual can achieve a suitable employment outcome.

D. The counselor assigned by DVR shall furnish a copy of the individualized written rehabilitation program and any subsequent amendments to the individual or, as appropriate, to the individual's authorized representative.

[12-31-98; Recompiled 10/31/01]

6.100.2.34 PROGRAM CONTENT: At a minimum, each individualized written rehabilitation program shall contain:

- A. A statement of the long-term appropriate vocational goal;
- B. A statement of the intermediate objectives related to the attainment of the long-term goal, including the specific vocational rehabilitation services to be provided, the projected dates for the initiation and the anticipated duration of each such service, and, if appropriate, a statement detailing how such services shall be provided or arranged through cooperative agreement with other service providers;
- C. If appropriate, a statement of the specific rehabilitation technology services to be provided and a statement of the specific on-the-job and related personal assistance services to be provided, including training in managing personal assistance services;
- D. An assessment of the expected need for post-employment services, and, if appropriate, extended services as well a provision for a reassessment of the need for post-employment services prior to the point of successful rehabilitation;
- E. Terms and conditions for providing goods and services, including objective criteria and an evaluation procedure and schedule for determining whether appropriate goals and objectives are being achieved;
- F. Identification of entities that will provide the services and the process used to provide or procure such services, including information identifying other related services, and benefits provided pursuant to any federal, state, or local program (comparable/similar benefits);
- G. A statement in the words of the individual or, if appropriate, the individual's authorized representative describing how the individual was informed about and involved in choosing goals, objectives, services, entities providing services, and methods used to provide such services;
- H. A description of rights and remedies and a description of the availability of a client assistance program; and
- I. The signature of the counselor assigned by DVR and the individual or, as appropriate, the individual's authorized representative.

[12-31-98; Recompiled 10/31/01]

6.100.2.35 REVIEW:

A. The counselor assigned by DVR shall review the individualized rehabilitation program with the individual annually, affording the individual or the individual's authorized representative an opportunity to review the individual's program and jointly re-develop the program and agree to its terms. Any revisions or amendments to the program resulting from the annual review shall be agreed upon and signed by the individual or, if appropriate, the individual's authorized representative and the counselor before such revisions shall take effect.

B. In those cases where an individualized written rehabilitation program has been developed for the purpose of extended evaluation to determine eligibility for vocational rehabilitation services, the counselor assigned by DVR shall conduct an assessment at least once in every ninety-day period during which such evaluation services are provided. At such time the counselor shall ascertain whether a determination of eligibility or ineligibility may be made.

[12-31-98; Recompiled 10/31/01]

6.100.2.36 [RESERVED]

6.100.2.37 INDIVIDUAL PARTICIPATION IN THE COSTS OF VOCATIONAL REHABILITATION

SERVICES: The counselor assigned by DVR shall request an individual with available financial resources to participate in the cost of his vocational rehabilitation services and shall negotiate the extent of that participation for all vocational rehabilitation services other than:

- A. Assessment for determining eligibility and vocational rehabilitation needs, including vocational rehabilitation services provided during an extended evaluation for purposes of assessment;
- B. Vocational rehabilitation counseling, guidance, and work-related placement services; and
- C. Referral services.

[12-31-98; Recompiled 10/31/01]

6.100.2.38 DETERMINATION OF COMPARABLE SERVICES AND BENEFITS: Prior to initiation of vocational rehabilitation services through an individualized written rehabilitation program, the counselor assigned by DVR shall determine the availability of comparable services and benefits to an individual, except when the determination:

- A. Would delay the provision of comparable services and benefits to an individual at extreme medical risk (based upon medical evidence provided by an appropriate licensed medical professional); or
- B. Would result in the loss of an immediate job placement due to a delay in the provision of such comparable services and benefits.

[12-31-98; Recompiled 10/31/01]

6.100.2.39 UTILIZATION OF COMPARABLE SERVICES AND BENEFITS:

A. DVR shall utilize comparable services and benefits determined to be available as appropriate in the provision of all vocational rehabilitation services to an individual or the individual's family members, except for the following services:

- (1) assessment for determining eligibility and vocational rehabilitation needs;
- (2) counseling, guidance, and work-related placement services, including job search assistance, placement assistance, job retention services, and personal assistance services;
- (3) vocational and other training services not provided in an institution of higher learning, including personal and vocational adjustment training, books, tools, and other training materials;
- (4) referral services;
- (5) rehabilitation technology services; and
- (6) post-employment services, including vocational rehabilitation services listed in this section, necessary to maintain, regain, or advance in employment.
- (7) [Reserved]

B. DVR shall not utilize comparable services and benefits when they are inadequate, or interfere with achieving the rehabilitation objective (including but not limited to those circumstances described in Section 38 [now 6.100.2.38 NMAC]).

C. [Reserved]

[12-31-98; Recompiled 10/31/01]

6.100.2.40 SCOPE OF VOCATIONAL REHABILITATION SERVICES FOR INDIVIDUALS:

A. Vocational rehabilitation services provided by DVR are any goods or services necessary to render an individual with a disability employable, including, but not limited to, the following:

- (1) An assessment for determining eligibility and vocational rehabilitation needs by qualified personnel, including, if appropriate, an assessment by personnel skilled in rehabilitation technology;
- (2) Counseling, guidance, and work-related placement services for individuals with disabilities, including job search assistance, placement assistance, job retention services, personal assistance services, and follow-up, follow-along, and specific post-employment services necessary to assist such individuals to maintain, regain, or advance in employment;

(3) Vocational and other training services for individuals with disabilities, which shall include personal and vocational adjustment, books, or other training materials, and such services to the families of such individuals as are necessary to the adjustment or rehabilitation of such individuals (except that no training services in institutions of higher education shall be paid for by DVR unless maximum efforts have been made to secure grant assistance, in whole or in part, from other sources to pay for such training);

(4) Physical and mental restoration services, including, but not limited to:

(a) corrective surgery or therapeutic treatment necessary to correct or substantially modify a physical or mental condition which is stable or slowly progressive and constitutes an impediment to employment, but is of such nature that such correction or modification may reasonably be expected to eliminate or reduce such impediment to employment within a reasonable length of time;

(b) necessary hospitalization in connection with surgery or treatment;

(c) prosthetic and orthotic devices;

(d) eyeglasses and visual services as prescribed by a physician skilled in the diseases of the eye or by an optometrist, whichever the individual may select;

(e) special services (including transplantation and dialysis), artificial kidneys, and supplies necessary for the treatment of individuals with end-stage renal disease; and

(f) diagnosis and treatment for mental and emotional disorders by a physician or licensed psychologist in accordance with state licensure laws.

(5) maintenance for additional costs incurred while participating in rehabilitation;

(6) interpreter services and note-taking services for individuals who are deaf, and reader services for those individuals determined to be blind after an examination by a physician skilled in the disease of the eye or by an optometrist, whichever the individual may select;

(7) recruitment and training services for individuals with disabilities to provide them with new employment opportunities in the fields of rehabilitation, health, welfare, public safety, and law enforcement, and other appropriate service employment;

(8) rehabilitation teaching services, reader services, and orientation and mobility services for individuals who are blind;

(9) occupational licenses, tools, equipment, and initial stocks and supplies;

(10) transportation in connection with the rendering of any vocational rehabilitation service;

(11) telecommunications, sensory, and other technological aids and devices;

(12) rehabilitation technology services;

(13) referral and other services designed to assist individuals with disabilities in securing needed services from other agencies through agreements developed by dvr, if such services are not otherwise available;

(14) transition services that promote or facilitate the accomplishment of long-term rehabilitation goals and intermediate rehabilitation objectives;

(15) on-the-job or other related personal assistance services provided while an individual with a disability is receiving vocational rehabilitation services in this section;

(16) supported employment services (provided only to individuals with the most severe disabilities); and

(17) services to family members of individuals with disabilities if necessary to the adjustment and rehabilitation of the individual.

B. Vocational rehabilitation services when provided for the benefit of groups of individuals, may also include the following:

(1) in the case of any type of small business operated by individuals with the most severe disabilities, the operation of which can be improved by management services and supervision provided by DVR, the provision of such services and supervision, along or together with the acquisition by DVR of vending facilities or other equipment and initial stocks and supplies;

(2) the establishment, development, or improvement of community rehabilitation programs, including, under special circumstances, the construction of a facility, and the provision of other services (including services offered at community rehabilitation programs) which promise to contribute substantially to the rehabilitation of a group of individuals but which are not related directly to the individualized rehabilitation written program of any one individual with a disability. Such programs shall be used to provide services that promote integration and competitive employment;

(3) the use of existing telecommunications systems (including telephone, television, satellite, radio, and other similar systems) which have the potential for substantially improving service delivery methods, and the development of appropriate programming to meet the particular needs of individuals with disabilities;

(4) the use of services providing recorded material for individuals who are blind and captioned films or video cassettes for individuals who are deaf; and

(5) technical assistance and support services to businesses that are not subject to Title I of the Americans with Disabilities Act of 1990 and that are seeking to employ individuals with disabilities.

[12-31-98; Recompiled 10/31/01]

6.100.2.41 PROGRAM ACCESS:

A. DVR shall:

(1) make its programs accessible to individuals with disabilities, ensuring all offices are physically accessible and reasonable accommodations are made to enable individuals with disabilities to take advantage of DVR services;

(2) ensure that individuals with disabilities are active participants in their respective rehabilitation programs, providing for meaningful and informed choices about the selection of the vocational rehabilitation services; and

(3) make referrals of individuals with disabilities to other agencies and organizations as appropriate, including the client assistance program.

B. [Reserved]

C. [Reserved]

D. [Reserved]

E. [Reserved]

[12-31-98; Recompiled 10/31/01]

6.100.2.42 INDIVIDUAL PARTICIPATION: An individual applying for or a recipient of vocational rehabilitation services must:

A. be available for assessment and vocational rehabilitation services for an indefinite or considerable period of time;

B. be responsive to DVR correspondence or telephone calls; and

C. accept, utilize, or participate in appropriate vocational rehabilitation services or diagnostics after a reasonable effort has been made to encourage his cooperation.

[12-31-98; Recompiled 10/31/01]

6.100.2.43 CASE CLOSURE:

A. The counselor assigned by DVR may close a case prior to or subsequent to provision of vocational rehabilitation services either because the individual:

(1) did not meet or did not continue to meet the eligibility criteria;

(2) was unavailable for assessment and vocational rehabilitation services for an indefinite or considerable period of time;

(3) was not responsive to DVR correspondence or telephone calls; or

(4) refused to accept, utilize, or participate in appropriate vocational rehabilitation services or diagnostics after a reasonable effort was made to encourage the individual's cooperation.

B. The counselor assigned by DVR may close a case when the individual is determined to be rehabilitated after the individual has been:

(1) determined eligible for vocational rehabilitation services;

(2) provided necessary assessment(s) of rehabilitation needs;

(3) provided counseling and guidance;

(4) provided appropriate and substantial vocational rehabilitation services in accordance with an individualized written rehabilitation program; and

(5) determined to have achieved a suitable employment outcome for at least sixty days.

[12-31-98; Recompiled 10/31/01]

6.100.2.44 NOTIFICATION OF CLOSURE DECISIONS:

A. After an individual has filed an application for services, DVR shall provide written notification whenever that individual's case is closed.

B. Written notification shall include any required amendment to the individualized written rehabilitation program and further specify:

(1) The reasons for the case closure;

(2) The rights and remedies available to the individual, including, as appropriate, recourse to the impartial hearing process; and

(3) The availability of services provided by the client assistance program.

[12-31-98; Recompiled 10/31/01]

6.100.2.45 POST-EMPLOYMENT SERVICES:

A. DVR shall provide specific post-employment services necessary to assist individuals rehabilitated through vocational rehabilitation services to maintain, regain, or advance in employment.

B. Required services must be related to the original plan and disability. If not, the division shall give consideration to opening a new case for the individual with a disability.

C. Any service, with the exception of medical care for acute conditions, may be provided as a post-employment service with the same requirements that apply to routine vocational rehabilitation services.

[12-31-98; Recompiled 10/31/01]

HISTORY of 6.100.2 NMAC

Pre-NMAC History: The material in this regulation was derived from that previously filed with the state records and archives under:

Division of Vocational Rehabilitation Rule No. 1.00, The Vocational Rehabilitation Process, filed June 19, 1990;

State Board of Education Regulation No. 93-5, Vocational Rehabilitation General Policies, Purpose, and Definitions, filed October 8, 1993;

Division of Vocational Rehabilitation Rule No. 3.00, Status 02 Applicant, filed June 19, 1990;

Division of Vocational Rehabilitation Rule No. 4.00, Eligibility, filed June 19, 1990;

State Board of Education Regulation No. 93-7, Vocational Rehabilitation: Eligibility and Extended Evaluation, filed October 8, 1993;

Division of Vocational Rehabilitation Rule No. 5.00, Status 06 Extended Evaluation; Division of Vocational

Rehabilitation Rule No. 6.00, Status 10 And 12 Thorough Diagnostic Study, filed June 19, 1990;

State Board of Education Regulation No.93-9, Vocational Rehabilitation: Comprehensive Assessment of Vocational Needs, filed October 8, 1993;

Division of Vocational Rehabilitation Rule No. 7.00, Individualized Written Rehabilitation Program, filed June 19, 1990;

State Board of Education Regulation No. 93-10, Vocational Rehabilitation: Individualized Written Rehabilitation Program, filed October 8, 1993;

Division of Vocational Rehabilitation Rule No. 8.00, Purchase of Goods and Services, filed June 19, 1990;

State Board of Education Regulation No. 93-11, Vocational Rehabilitation: Economic Need and Comparable Benefits, filed October 8, 1993;

Division of Vocational Rehabilitation Rule No. 9.00, Status 14 Counseling and Guidance, filed June 19, 1990;

Division of Vocational Rehabilitation Rule No. 11.00, Status 18 Training, filed June 19, 1990;

Division of Vocational Rehabilitation Rule No. 12.00, Other Services, filed June 19, 1990;

State Board of Education Regulation No. 93-12, Vocational Rehabilitation: Services, filed October 8, 1993;

Division of Vocational Rehabilitation Rule No. 13.00, Placement and Employment, filed June 19, 1990;

Division of Vocational Rehabilitation Rule No. 14.00, Supported Employment, filed June 19, 1990;

Division of Vocational Rehabilitation Rule No. 15.00, Case Closure, filed June 19, 1990;

State Board of Education Regulation No. 93-13, Vocational Rehabilitation: Case Closure, filed October 8, 1993;

Division of Vocational Rehabilitation Rule No. 16.00, Post Employment Services, filed June 19, 1990;

State Board of Education Regulation No. 93-14, Vocational Rehabilitation: Post-Employment Services, filed on October 8, 1993;

Division of Vocational Rehabilitation Rule No. 17.00, Client Rights and Responsibilities; State Board of Education Regulation No. 93-6, Vocational Rehabilitation: Administrative Provisions, filed October 8, 1993;

Division of Vocational Rehabilitation Rule No. 18.00, Case Documentation, filed June 19, 1990;

Division of Vocational Rehabilitation Rule No. 2.00, Referrals, filed June 20, 1990;

Division of Vocational Rehabilitation Rule No. 10.00, Status 16 Physical and Mental Restoration, filed June 20, 1990;
and
State Board of Education Regulation No. 93-8, Vocational Rehabilitation: Order of Selection, filed October 8, 1993.

History of Repealed Material [RESERVED.]